Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket 02-277
	)	MM Docket 01-235
Cross-Ownership of Broadcast Stations and Newspapers	)	
	)	MM Docket 01-317
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	
	)	MM Docket 00-244
Definition of Radio Markets	)	
	)	MB Docket 03-130
Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area	)	

TO: The Commission

COMMENTS OF OMNI BROADCASTING COMPANY ON SMALL MARKET DEFINITION FOR MULTIPLE OWNERSHIP OF RADIO BROADCAST STATIONS

Omni Broadcasting Company, through counsel, herewith submits its comments on the Notice of Proposed Rule Making released herein on July 2, 2003, in which the Commission solicits input on how to draw specific market boundaries in areas of the country not located in Arbitron Metros.[1]

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[1] *Report and Order and Notice of Proposed Rule Making*, FCC 03-127, adopted June 2, 2003, at ¶ 657.

Omni Broadcasting Company owns and operates nine radio stations serving three small Minnesota markets.[2] To test the appropriateness of using criteria other than signal strength contours to define a radio market for purposes of the multiple ownership rule, Omni commissioned a study by Clifton G. Moor of Bromo Communications, Inc., which is attached hereto and incorporated herein by reference (the "Study").

The Study reveals startling infirmities in using boundary lines such as counties, Metropolitan and Micropolitan Statistical Areas (MAs), or Cellular Market Areas (CMAs). Such boundaries were created as governmental subdivisions or for governmental administrative and analytical purposes, not for reasons related to radio broadcast station service areas. Radio stations historically have not been applied for, constructed, and operated with county, MA, or CMA borders in mind. It would be unrealistic and indeed, contrary to reason for the Commission to adopt any of these geographic boundary criteria. The best and most logical measure of a radio market is the broadcast signal a radio station transmits. Signals do not stop at county, MA, or CMA borders. Neither listeners nor advertisers limit their reliance on radio stations to stations located only within their county, MA, or CMA.

Omni's Bemidji cluster of one AM and three FM stations proves the acute infirmity of using MAs to define a radio market. KLLZ-FM is licensed to Walker, located in Cass County. Cass and Crow Wing Counties make up MA #14660. See Study, Exhibit 1. The KLLZ-FM transmitter, however, is located in adjacent Hubbard County, which is not part of the MA. Moreover, KLLZ-FM and the other stations in its cluster

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[2] The markets are Bemidji (KBUN, KBHP(FM), KKZY(FM), all licensed to Bemidji, and KLLZ-FM, Walker); Brainerd (WJJY-FM, Brainerd, KBLB(FM), Nisswa, and KUAL-FM, Crosby); and Alexandria (KULO(FM), Alexandria, and KIKV-FM, Sauk Centre).

operate from offices and studios located in Bemidji, which is located in Beltrami County. Bemidji is the largest community in the KLLZ-FM service area, with the largest advertiser and listener base.[3] To consider defining a market other than by reference to the KLLZ-FM signal would require the Commission to resolve the question whether KLLZ-FM is a Walker (Cass and Crow Wing MA) station, a Bemidji (Beltrami County) station, or a Hubbard County station. It is, of course, all of these. The present signal contour method of defining a radio market takes these geographical considerations into account—the market is where the signal goes.

A similar situation exists with Omni's two other Bemidji FM stations, KBHP and KKZY. They share a common transmitter site in adjoining Hubbard County, not in Beltrami County, where their city of license is located.

The Study examines the essential flaw in using any criterion that relies on county boundaries (and MAs and CMAs are derived from such demarcations) to define radio markets. Cass County is an unusually large county, extending 134.7 km (84 mi) from north to south. Residents regard the county as being in two distinct parts, "north" Cass (Bemidji-oriented) and "south" Cass (Brainerd-oriented). Certainly no Class A FM station, the city grade radius of which extends only 16 km (10 mi), could be said to serve the county. It is unlikely that even a full Class C FM, with a radius of 68 km (42 mi), could serve the entire county. To adopt a scheme that bears no logical relationship to station coverage would be to force a radio market definition on a station that takes into account where signals do not go.

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[3] The population center and economic hub of the Cass/Crow Wing MA is Brainerd, some 85 miles southeast of Bemidji.

Perhaps the best example of this defect is San Bernardino County, California, part of the Riverside-San Bernardino PMSA, and the largest county in the United States.[4] It measures 340 km (217 mi) from its southwest corner to its northeast corner. Some of its principal communities—San Bernardino, Ontario, Barstow, Victorville, Needles, and Baker—are hundreds of miles apart. Although the San Bernardino Mountains provide a natural barrier for broadcast signals, a geographic boundary approach to radio market definition does not take into account such topographic features.

The Study notes that examination of geographic boundaries by population density reveals an additional defect in their use to define radio markets. San Bernardino County is 20,160 square miles in size; its population density is 84.8 persons per square mile. By contrast, Arlington County, Virginia, the smallest county in the United States, has a population density of 7,287 persons per square mile.[5] It makes no sense to define a radio market in such a way that one market (San Bernardino) could be 775 times larger than another (Arlington), yet have only 1.165 percent comparative population density.

The Study additionally observes that for a variety of reasons, many stations operate with limited power, limited tower height, or directional antennas. Such aspects of a station's technical facilities may be employed in order to locate on existing towers, mountains, or at a location chosen by other necessary or desirable considerations. An arbitrary criterion such as an MA would be blind to such technical variations and real-world marketplace considerations.

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[4] San Bernardino County is larger than Massachusetts, Rhode Island, Connecticut, and Delaware combined. Source: dmoz.org/Regional/North_America/United_States/California/Counties/desc.html.

[5] "Arlington is the smallest county in the United States that is self-governing. New York County, New York (22 sq. miles) is smaller, but, as the borough of Manhattan, it is not a separate jurisdictional entity." Source: arlingtoncounty.com/recreation.htm.

In the final analysis, the essential objective of a radio signal is to go where people are. The economics of broadcasting requires stations to maximize their listenership and advertiser base. Geography-based concepts produce an infinite variety, shape, size, and population density of a market, which cannot account for this essential aspect of the industry—signals serve people. Signal contour analysis does account for it.

The Study rejects considering CMAs for purposes of radio market definition. In KLLZ-FM's case, its location in the Cass/Crow Wing MA would put it in CMA #487 (Minnesota 6), which includes not only those two counties, but also Hubbard, Morrison, Aitkin, Carlton, Mille Lacs, Kanabec, Pine and Isanti Counties. Ironically, Beltrami County is not part of this CMA, although it is the heart of KLLZ-FM's advertiser and listener base. Moreover, as the Study points out, the CMA's large size, 241 km (149 mi) across, appears to be a meaningless subject area for purposes of multiple ownership analysis.

With few exceptions, the signal contour method of defining radio markets has well served the Commission, the public, and broadcast licensees for more than ten years. The enhancements adopted by the Commission in its June 2, 2003, order are a reasoned and appropriate refinement of that methodology, to address anomalies that arose with experience under the original formula.[6] Omni urges the Commission to continue to use

[6] FCC 03-127, at ¶ 285-6.

the signal contour method. It is workable and realistic. It recognizes and implements best the fundamental notion that markets should be defined by where signals go.

Respectfully submitted,

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October 6, 2003

Technical Comments
On Behalf of
Omni Broadcasting
Regarding
Radio Market Definition
October 2003

A study is being made of alternate ways to determine radio markets for the purpose of ownership of multiple broadcast stations. Currently a contour basis is used. Each party who desires more than one AM or FM station must draw the city grade contour of all the desired co-owned stations. This area of co-owned city grade signals becomes the radio market and the object of a study. The desiring party then analyses the number of other radio services that also supply city grade signals to all or part of the market. As an alternative to this traditional method of determining radio markets, the possibility of making the Metropolitan and Micropolitan Statistical Areas (MAs) the market (rather than the actual broadcast signal) is considered herein.

The commenter owns stations in various markets of Minnesota including KLLZ-FM, Walker; KBHP(FM), Bemidji and KKZY(FM), Bemidji. KLLZ-FM is in Micropolitan Statistical Area 14660 (composed of Cass and Crow Wing Counties). What is of importance here is the unusual shape of Cass County (See Attached Exhibit). Measuring from a location on the southern Cass County border to a point on the north Cass County border is a distance of 134.7 KM. When the city grade radius of a Class A FM broadcast station only extends 16 KM, including signals that may penetrate the MA 134 miles away appears to be a

questionable procedure. The KLLZ transmitter is actually located in adjacent Hubbard County. Although Walker is amply served with the 70 dBu contour, the strongest best signal falls in Hubbard County. The MA approach ignores any population not residing in the one MA where the city of license is located. There is a similar story with KKZY(FM) and KBHP(FM). Although they are allocated to Bemidji (Beltrami County), their transmitters are also located in Hubbard County. Once again taking a county approach might very well eliminate Hubbard County, the county receiving the strongest signal from all three FM stations.

All three of these stations serve many smaller communities within their service areas as well as Bemidji. Bemidji is the city with the largest advertising base and largest potential audience. Using the county or MA approach might not allow for population centers such as Bemidji to be considered since Bemidji is not in the county containing Walker, the KLLZ-FM city of license.

Examining other FM classes, a full Class C FM broadcast station (100 KW from 600 meters HAAT) generates a 70 dBu contour 68 KM. Therefore, it is highly unlikely that the largest possible FM broadcast station could cover all of Cass County which is 134.7 KM long.

Many stations operate with limited power, limited tower height or directional antennas. If an arbitrary county limit or MA definition is used to form the subject area, this removes real world marketplace and technical limits from multiple

ownership studies. In the real world, these above-listed tools are employed in order to locate on existing towers, mountains or desirable location. It would appear that these MA statutory limits are less than accurate when compared to the actual 70 dBu contour of a broadcast facility. The actual contour method of determining radio markets would increase or decrease automatically with the class of station, power, height and directionality.

Another example of an unusual MA is San Bernardino County, CA. This county is unusual in that it is reported to be the largest county in the contiguous 48 states. My measurement from the southwest corner to the northeast corner of this county proved a width of 350 KM. Although this county does encompass some desert and mountainous areas, cities such as San Bernardino, Ontario, Barstow, Victorville, Needles and Baker are all in the same county and same MA. Some of these cities are hundreds of miles apart. Although the tall mountains of San Bernardino County provide natural barriers for broadcast signals, the MA geographic approach disregards such impediments. With so many broadcast services located in and near this MA, it appears that the option to make the MA also the subject area of multiple ownership studies is highly questionable.

Population density is an interesting approach in comparing counties or MAs. San Bernardino County with its 20,160 square mile size has a population density of 84.8 persons per square mile. Let us now compare this county to Arlington County, Virginia. Arlington County is possibly the smallest county in the United

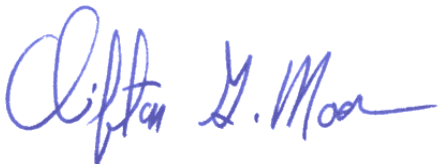
States. Although it is small, it is very heavily populated with a density of 7,287 persons per square mile. With the population density of these two illustrative counties so drastically different, it furthers the argument that multiple ownership based on the licensee's county or MA is not an equitable method to allow multiple ownership.

Another option under consideration is to use the Cellular Market Areas (CMAs) to form the subject area of a multiple ownership study. In CMA #487 (Minnesota 6) the counties of Hubbard, Cass, Crow Wing, Morrison, Aitkin, Carlton, Mille Lacs, Kanabec, Pine and Isanti are included. When measured, this Minnesota 6 CMA from the southeast corner to the northwest there is a distance of 241 KM. Once again, this appears to be a large, meaningless subject area for multiple ownership studies.

In conclusion, the current system of using the actual city grade contours of the actual stations to comprise the subject area appears to be an efficient, real world approach to multiple station ownership. This method does not artificially increase or decrease the subject area….rather it relies on actual area and contours. Variations of power, frequency, height and directionality are automatically incorporated in the contour method. Systems of using Metropolitan and Micropolitan Statistical Areas or Cellular Market Areas produce large, unwieldy

areas with very little meaning to actual radio markets and listenership.

All information contained herein is thought to be true and accurate to the knowledge of the undersigned.



Clifton G. Moor
Bromo Communications, Inc.

October 3, 2003

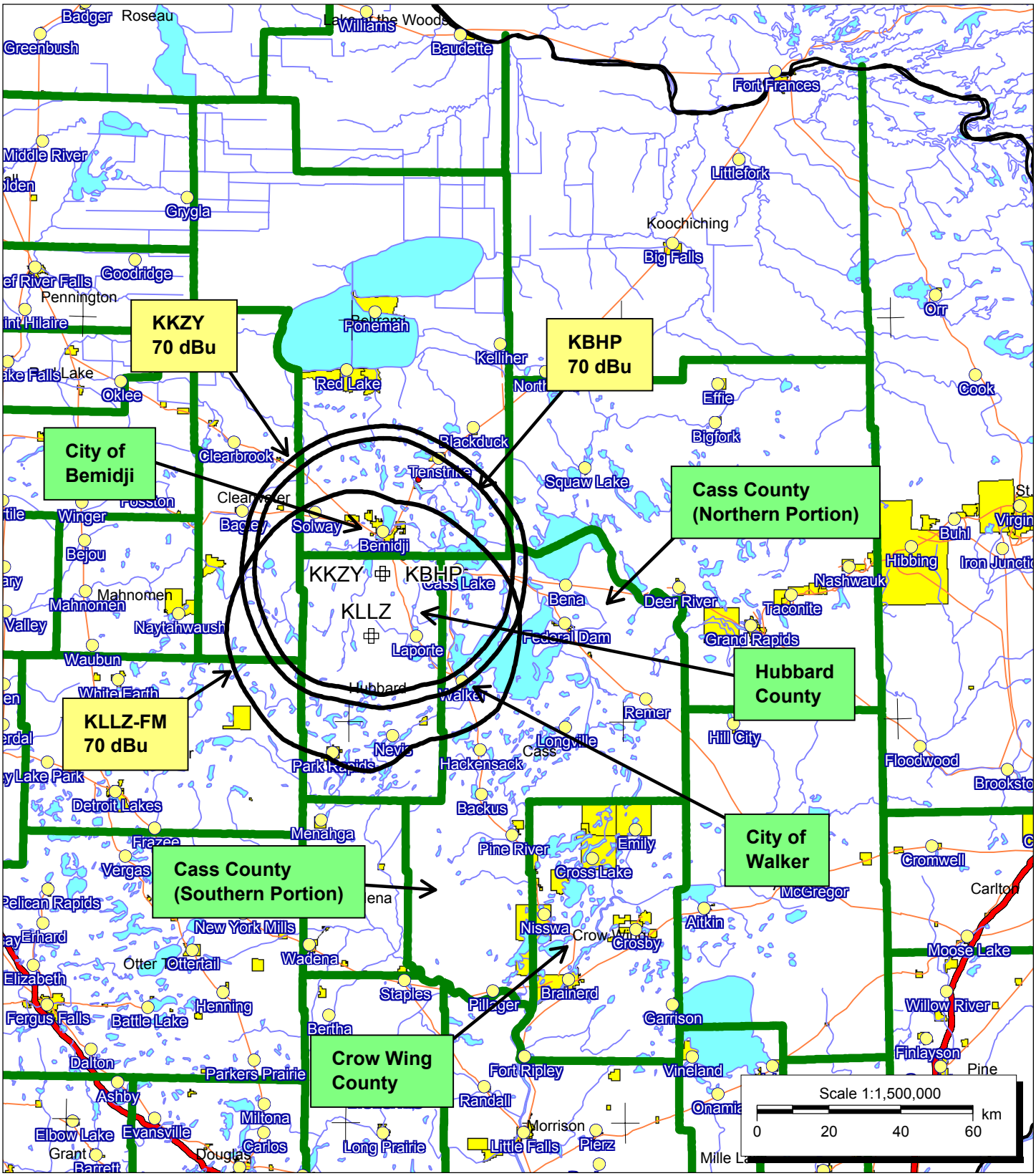


Exhibit #1
Technical Comments
Radio Market Definition

Bromo Communications, Inc.
Atlanta, Georgia
October 2003